80-20

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No.

ROBERT N. SQUIRES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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July, 1980

SCHNEPP & BARNES PRINTERS, INC., SPRINGFIELD, ILL.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No.

ROBERT N. SQUIRES,

Petitioner,

vs.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

QUESTIONS PRESENTED FOR REVIEW

I.

Whether A Specific Intent To Violate A Specified Constitutional Right Must Be Expressly Stated In A Jury Instruction Where A Criminal Violation Of A Civil Right Is Charged.

II.

Whether A Statement Given By A Police Officer During An Administrative Internal Investigation Is A Voluntary Statement.

TABLE OF CONTENTS

	Page
Questions Presented for Review	1
Table of Authorities	3
Opinions Below	4
Jurisdictional Statement	4
Statutes Involved	5
Statement of the Case	6
A. First Instance of Federal Jurisdiction	6
B. The Indictment	6
C. The Evidence	6
1. For the Prosecution	6
2. For the Defense	7
D. Statement of the Petitioner	7
E. The Instructions	7
Reasons for the Allowance of the Writ	9
A. A specific intent to violate a specified constitutional right must be expressly stated in a jury instruction where a criminal violation of a civil right is charged.	10
B. A statement given by a police officer during an administrative internal investigation is not a voluntary statement	15
Conclusion	16
Appendix	App. 1
Judgment and Commitment Order	App. 1
Judgment Order of United States Court of Appeals	App. 2
Order denying Petition for Rehearing	App. 4

TABLE OF AUTHORITIES

Page

Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967) 15

Sandstrom v. Montana, 442 U.S. 510, 61 L.Ed.2d 39, 99 S.Ct. — (1979) 13

Screws v. United States, 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. 1495 (1945) 9

Uniform Sanitation Mens Association, Inc., v. Commissioner of Sanitation, 426 F.2d 619 (2nd Cir. 1970), cert. denied, 406 U.S. 961, 92 S.Ct. 2055, 31 L.Ed.2d 349 (1972) 16

OPINIONS BELOW

The trial court on December 13, 1979, entered a Judgment and Commitment Order finding that the Defendant has been convicted as charged of a criminal civil rights violation in violation of Section 242, Title 18, United States Code, as charged in Count I of the indictment. The Court ordered that the Defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year under Section 4205(f), Title 18, United States Code, which requires that the Defendant be released as if on parole after service of one-third of such term.

The United States Court of Appeals for the Seventh Circuit on April 29, 1980, affirmed the conviction of the Defendant stating that the "willfulness" instruction was assurance that the instruction given was consistent with the Supreme Court's decision in *Screws v. United States,* 325 U.S. 91 (1945). The Court held that by trial counsel's failure to make a timely objection to a statement obtained from the Defendant during an administrative investigation waived his right to appeal from its admission and on its face would not appear to fall under the proscription of *Garrity v. New Jersey,* 385 U.S. 493 (1967).

On petition for rehearing pertaining to the instructions regarding specific intent and willfulness, the Court entered an order on June 10, 1980, denying the petition for rehearing.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under the provisions of Section 1254(1), Title 28, United States Code.

The petitioner seeks review of the order of the United

States Court of Appeals for the Seventh Circuit dated April 29, 1980 and entered on April 29, 1980.

The United States Court of Appeals for the Seventh Circuit denied a petition for rehearing by order dated June 10, 1980 and entered on June 10, 1980.

STATUTES INVOLVED

18 United States Code, Section 242:

> "Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life."

STATEMENT OF THE CASE

A. *First Instance of Federal Jurisdiction*

The Petitioner was indicted pursuant to Section 242, Title 18, United States Code, in the United States District Court for the Central District of Illinois.

B. *The Indictment*

The Petitioner, a patrolman for the City of Springfield Police Department, was charged that on November 3, 1978, while acting under color of law, beat and assaulted Richard G. Miller, an inhabitant of the State and did thereby wilfully deprive him of his rights protected by the Constitution and the statutes of the United States in that he was deprived of the right not to be deprived of liberty without due process of law.

C. *The Evidence*

1. *For the Prosecution*

The victim and his daughter were arguing over the possession of automobile keys during the early morning hours. The victim poked his fingers into the chest of the Petitioner, who had responded while on duty, and was told to sit down. The victim some minutes later again poked his fingers toward the Petitioner whereupon the Petitioner pushed the victim into the kitchen. The Petitioner struck the victim in the side of the head with his fist although the victim testified that he was struck with a dark leather object. (Tr. Vol. I, pp. 55, 146-156)

The victim was dragged from the kitchen in a bloody state and taken to the hospital where he was given emergency treatment for lacerations and contusions to the head area which necessitated twenty-seven stitches. His blood alcohol at the time of his arrival at the hospital was somewhat higher than 2.4. The victim was admitted to the hospital

for two days in order that he would not have to go to the Springfield City Jail. (Tr. Vol. II, pp. 221-278; Vol. III, p. 338)

Prior to being taken to the hospital, the victim was struck by the Petitioner in an attempt to place handcuffs upon him. (Tr. Vol. I, p. 173)

2. *For the Defense*

The Petitioner testified that the victim began poking the Petitioner with his fingers and when the victim raised his fingers toward the eyes of the Petitioner the Petitioner pushed the victim from him and he went backwards into the kitchen. The victim got up with clenched fists and came toward the Petitioner whereupon the Petitioner struck the victim with his right fist. The victim again came at the Petitioner where he was struck again with the Petitioner's right fist. (Tr. Vol. III, pp. 305-340)

D. *Statement of the Petitioner*

A Springfield Police Captain investigated a complaint filed by the victim against the Petitioner. During the investigation a written statement from the Petitioner was obtained and was admitted into evidence without objection. (Tr. Vol. II, pp. 293-295) Later the trial court reconsidered the admission upon Petitioner's objection on the basis it was a statement or confession obtained without the benefit of the Petitioner being advised of his Fifth Amendment rights against self-incrimination. The Court admitted it over objection. (Tr. Vol. III, pp. 382-383)

E. *The Instructions*

Government's Instruction Number 13 is as follows:

> Four essential elements are required to be proved in order to establish the offense charged in the Indictment:
>
> FIRST: The person upon whom the alleged acts were

committed must have been an inhabitant of a state, district or territory of the United States, here the State of Illinois.

SECOND: The defendant must have been acting under color of the law, that is, while using or misusing power possessed by reason of the law. For example, a police officer, performing or purporting to perform official functions, such as making arrests, is acting under color of law.

THIRD: The conduct of the defendant must have deprived the victim of some right secured or protected by the Constitution of the United States. One of the rights secured and protected by the Constitution of the United States is that no person acting under color of law shall deprive any person of liberty without due process of law. Liberty includes the right to be free from unreasonable, unnecessary, or unprovoked assaults or abuse by officers acting under color of law.

FOURTH: There must have been an intent on the part of the defendant willfully to subject the victim to the deprivation of the right described above.

(Tr. Vol. III, p. 445)

Government's Instruction Number 17 is as follows:

With regard to the Fourth Element—willfullness—an act is done wilfully if it is done voluntarily and intentionally, and with the specific intent to do something the law forbids—that is, with bad purpose to disobey or disregard the law; in the case of the statute involved here, with specific intent to deprive the victim of liberty without due process of law.

With regard to specific intent, intent is a state of mind and can be proven by circumstantial evidence. Indeed, it can rarely be established by any other means. In determining whether this element of specific intent was present you may consider all the attendant circumstances of the case.

You may infer that a person ordinarily intends all the

natural and probable consequences of an act knowingly done. In other words, you may in this case infer and find that the defendant intended all the consequences that a person, standing in like circumstances and possessing like knowledge, should have expected to result from his or her act or acts knowingly done.

It is not necessary to show or probe that the defendant was thinking of Constitutional terms, at the time of the incident, for a reckless disregard for a person's Constitutional rights is clear evidence of specific intent to deprive that person of those rights. You may find that the defendant acted with requisite specific intent even if you find that they had no real familiarity with the Constitution or with the particular Constitutional right involved, provided that you find that he willfully and consciously did the act which deprived the victim of his Constitutional rights. Nor does it matter that the defendant may have also been motivated by hatred or revenge or some other emotion, provided the intent which I have described to you is present.

If you find that the defendant knew what he was doing and that he intended to do what he was doing, and if you find that what he did constituted a deprivation of a Constitutional right, then you may conclude that the defendant acted with the specific intent to deprive the victim of that Constitutional right.
(Tr. Vol. III, pp. 445-446)

REASONS FOR THE ALLOWANCE OF THE WRIT

The United States Court of Appeals for the Seventh Circuit has decided a federal question in our view in conflict with the decision of this Court in *Screws v. United States,* 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. 1495 (1945).

In any violation under Section 242, Title 18, United States Code, there must be a willful intent to deprive a person under color of state law of a constitutionally protected right. An act may be criminal in nature under state law, but intent

necessary for a conviction under Section 242 may be absent. To place this issue before a jury, it is essential that instructions defining intent comply with the dictates of *Screws, supra.*

A. *A specific intent to violate a specified constitutional right must be expressly stated in a jury instruction where a criminal violation of a civil right is charged.*

Government's instruction 17 is an attempt to define willfulness as required under Section 242. In the trial court's definition, it refers back to the common definition of willfulness as an act done voluntarily and intentionally. This is erroneous.

The last paragraph of the instruction states:

> If you find that the Defendant knew what he was doing and that he intended to do what he was doing, and if you find that what he did constituted a deprivation of a Constitutional right, then you may conclude that the Defendant acted with the specific intent to deprive the victim of that Constitutional right.
> (Tr. Vol. III, p. 446)

Under this language the jury was instructed that if the Petitioner intended to strike the victim which was a constitutionally protected right, then they could conclude that the Petitioner acted with specific intent. This is error.

In *Screws v. United States, supra,* this Court said:

> "The serious character of the challenge to the Constitutionality of the act is emphasized if the customary standard of guilt for statutory crimes is taken. As we shall see specific intent is at all times required . . . But the general rule was stated in Ellis v. United States, 206 U.S. 246, 257, 51 L.Ed. 1047, 1053, 27 S.Ct. 600, 11 Ann. Cas. 589, as follows: 'If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the

only sense in which the law ever considers intent'." At page 1500 (L.Ed.)

This Court goes on to find if such an interpretation is not necessary, it should be avoided. The interpretation this Court is referring to is the use of the general rules applicative to this statute.

"We recently pointed out that 'willful' is a word of 'many meanings, its construction often being influenced by its context.' . . . word denotes an act which is intentional rather than accidental . . . but 'when used in a criminal statute it generally means an act done with a bad purpose.' . . . in that event something more is required than doing of the act prescribed by the statute . . . An evil motive to accomplish that which the statute condemns becomes a constituent element of the crime . . . And that issue must be submitted to the jury under appropriate instructions . . . An analysis of cases in which 'willfully' has been held to connote more than an act which is voluntary or intentional would not prove helpful as each turns on its own peculiar facts. Those cases, however, make clear that if we construe 'willfully' in Section 20 as connoting a purpose to deprive a person of a specific Constitutional right, we would introduce no innovation. The Court, indeed, has recognized that the requirement of a specific intent to do a prohibited act may avoid these consequences to the accused which may otherwise render a vague or indefinite statute valid." Page 1502 (L.Ed.)

Also, in the *Screws* case at page 1503 (L.Ed.), this Court said:

"Moreover, the history of Section 20 affords some support for the narrower construction. As we have seen the word 'willfully' was not added to the Act until 1909. Prior to that time, it may be that Congress intended that he who deprived a person of any right protected by the Constitution should be liable without more. That was the pattern of criminal legislation which has been sustained without any charge or proof of

scienter. Shelvin-Carpenter Company v. Minnesota, 218 U.S. 57, 54 L.Ed. 930, 30 S.Ct. 663; United States v. Balint, 258 U.S. 250, 66 L.Ed. 608, 42 S.Ct. 301, supra. And the present Act in its original form would have been susceptible of the same interpretation apart from the equal protection clause of the Fourteenth Amendment, where 'purposeful discriminatory' action must be shown. Snowden v. Hughes, 321 U.S. 1, 8, 9, 88 L.Ed. 497, 502, 503, 64 S.Ct. 397. But as we have seen, the word 'willfully' was added to make the Section 'less severe.' We think the reference is permissible that its severity was to be lessened by making it applicable only where the requisite bad purpose was present, thus requiring specific intent not only where discrimination is claimed, but in other situations as well. We repeat that the presence of bad purpose or evil intent alone may not be sufficient. We do say that a requirement of specific intent to deprive a person of a federal right made definite by decision or other rule saves the Act from any charge of unconstitutionality on the grounds of vagueness. The difficulty here is that this question of intent was not submitted to the jury with the proper instructions. The court charged that petitioners acted illegally if they applied more force than was necessary to make the arrest effectual or to protect themselves from the prisoner's alleged assault. But in view of our construction of the word 'willfully' the jury should have been further instructed that it was not sufficient that petitioners had a general bad purpose. To convict it was necessary to find that petitioners had the purpose to deprive the prisoner of a Constitutional right, e.g., the right to be tried by a court rather than by ordeal. And in determining whether that requisite bad purpose was present the jury would be entitled to consider all the attendant circumstances — the malice of petitioners, the weapons used in the assault, its character and duration, the provocation, if any, and the like.'' Page 1505 (L.Ed.)

The issue the Petitioner raises to this Court can be best seen from the Government's argument as follows:

> The point of all this is, it doesn't make any difference how it got there. It doesn't make any difference how he got that cut. We don't have to prove that he did it with this thing (indicating). We don't have to prove that he did it with this thing (indicating) or that he did it with some other object.
>
> Officer Squires, you — in his statement that was admitted into evidence, and on the witness stand Officer Squires said, I did it. There's no question about whether or not he did it. We don't have to prove how he did it. And keep that in mind.
>
> That testimony was offered to show the — what possibly could have happened in this case. The Government doesn't have to prove how he did it. He had admitted that he did it. *The question then becomes whether or not he used excess force in — in doing it.* (emphasis added)
>
> (Tr. Vol. III, p. 431)

It would appear from the Government's argument that they believed all that was necessary for them to prove was the force used was excessive.

Further, that portion of the instruction that if you find that he knew what he was doing and intended to do what he was doing does not fulfill the burden placed upon the Respondent under Government's Instruction 17. This Court in *Sandstrom v. Montana,* 442 U.S. 510, 61 L.Ed. 2d 39, 99 S.Ct. — (1979), has discussed presumptive intent regarding instructions to the jury. In that case, a murder trial, the trial court instructed the jury that "a person intends the ordinary consequences of his voluntary acts." At page 44 (L.Ed.).

This Court went on to state at Page 45 (L.Ed.):

"The threshold inquiry in ascertaining the Constitu-

tional analysis applicable to this kind of jury instruction is to determine the nature of the presumption it describes. See Ulster County Court v. Allen, — U.S. —, —, — —, 60 L.Ed. 2d 777, 99 S.Ct. 2213 (1979). That determination requires careful attention to the words actually spoken to the jury, see id., at —n 16, 60 L.Ed. 2d 777, 99 S.Ct. 2213, for whether a defendant has been accorded his Constitutional rights depends upon the way in which a reasonable juror could have interpreted the instruction."

This Court was dealing with the essential element of intent and in its holding stated at page 51 (L.Ed.):

"A presumption which, although not conclusive, had the effect of shifting the burden of persuasion to the Defendant, would have suffered from similar infirmities. If Sandstrom's jury interpreted the presumption in that manner, it could have concluded that upon proof by the State of the slaying and of additional facts not themselves establishing the element of intent, the burden was shifted to the Defendant to prove that he lacked the requisite mental state. Such a presumption was found Constitutionally deficient in Mullaney v. Wilbur, 421 U.S. 684, 44 L.Ed. 2d 508, 95 S.Ct. 1881 (1975). In Mullaney the charge was murder, which under Maine law required proof not only of intent but of malice. The trial court charged the jury that 'malice aforethought is an essential and indispensable element of the crime of murder.' Id., at 686, 44 L.Ed. 2d 508, 95 S.Ct. 1881. However, it also instructed that if the prosecution established that the homicide was both intentional and unlawful, malice aforethought was to be implied unless the Defendant proved by a fair preponderance of the evidence that he acted in the heat of passion on sudden provocation. Mullaney v. Wilbur, 421 U.S., at 686, 44 L.Ed. 2d 508, 95 S.Ct. 1881. As we recounted just two Terms ago in Patterson v. New York, '(t)his Court . . . unanimously agreed with the Court of Appeals that Wilbur's due process rights had been invaded by the presumption casting upon him the

> burden of proving by a preponderance of the evidence that he had acted in the heat of passion upon sudden provocation.' 432 U.S. at 214, 53 L.Ed. 2d 281, 97 S.Ct. 2319. And Patterson reaffirmed that 'a State must prove every ingredient of an offense beyond a reasonable doubt, and . . . may not shift the burden of proof to the defendant' by means of such a presumption. Id., at 215, 53 L.Ed. 2d 281, 97 S.Ct. 2319."

In our view what seems to us to be particularly disturbing in the affirmance in this case is that the Circuit Court of Appeals has stated that Government's Instruction 17 is consistent with this Court's decision in *Screws v. United States, supra.* Government's Instruction 13 which defines the four essential elements to be proven states that: "There must be an intent on the part of the Defendant willfully to subject the victim to the deprivation of the right . . ." and the jury must determine willfulness under Government's Instruction 17 which in our opinion is contra to and in violation of *Screws, supra.*

B. *A statement given by a police officer during an administrative internal investigation is not a voluntary statement.*

We suggest that a statement given during an internal investigation of the police department is a coerced statement regardless of whether or not the employee being investigated is told that unless such statement is given his employment will be terminated.

This Court in *Garrity v. New Jersey,* 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562 (1967) dealt with this concept. At page 500 (L.Ed.), this Court held "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office."

This situation arose again in *Uniform Sanitation Mens Association, Inc. v. Commissioner of Sanitation,* 426 F. 2d 619 (2nd Cir. 1970), *cert. denied,* 406 U.S. 961, 92 S.Ct. 2055, 32 L.Ed. 2d 349 (1972). In that case at page 627 (L.Ed.), this Court held:

> "Public employees do not have an absolute Constitutional right to refuse to account for their official actions and still keep their jobs; their right conferred by the Fifth Amendment itself, as construed in Garrity, is simply that neither what they say under such compulsion nor its fruits can be used against them in a subsequent prosection."

The Petitioner would submit to this Court that this statement was inadmissible by reason that it was a coerced statement obtained during a police investigation without any warnings to Defendant. Though this statement may have been admissible for impeachment purposes, or possible rebuttal, we suggest it was, pursuant to *Garrity,* not admissible in the Government's case.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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UNITED STATES DISTRICT COURT

Central District of Illinois

ROBERT NOLAN SQUIRES, Defendant

Docket No. 79-30018

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date: December 13, 1979.

MARK RABIN and JOHN LONG, Counsel

There being a finding/verdict of Guilty, by Jury Nov. 2, 1979.

Defendant has been convicted as charged of the offense(s) of criminal civil rights violation in violation of Title 18, Section 242, United States Code, as charged in Count 1 of the Indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year, under Title 18, Section 4205(f), United States Code, which requires defendant be released as if on parole after service of one-third of such term.

Signed: J. WALDO ACKERMAN
U. S. District Judge

Dec. 13, 1979

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604
(Argued April 28, 1980)
April 29, 1980

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. ROBERT A. GRANT, Senior District Judge*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 80-1021

versus

ROBERT NOLAN SQUIRES,

Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois, Springfield Division
No. 79-CR-30018
J. WALDO ACKERMAN, Judge

ORDER

The Court, having read the briefs, addressed itself to the record, heard oral argument on behalf of the appellant, and conferred at the bench, announced in open court that the judgment appealed from is AFFIRMED.

The defendant waived his right to appeal from the admission of exhibit 16 by his failure to make a timely objection

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* Senior District Judge Robert A. Grant, for the Northern District of Indiana, is sitting by designation.

at trial. The exhibit was consistent with the defendant's trial testimony and on its face does not appear to have been made as a result of an official investigation such as that discussed in *Garrity v. New Jersey,* (385 U.S. 493 (1967)). The defendant's failure to object to the admission of the exhibit meant that the facts necessary to determine whether *Garrity* applied were never developed. The defendant's objections to jury instructions which indirectly referred to exhibit 16 were similarly waived.

Our examination of the "willfulness" instruction assures us that the instruction given was consistent with the Supreme Court's decision in *Screws v. United States,* (325 U.S. 91 (1945)). We find no error in the other challenged instructions.

Finally, we conclude that there was sufficient evidence to support the jury's verdict and that the trial judge did not abuse his discretion in sentencing the defendant. The judgment appealed from will therefore be AFFIRMED.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604
June 10, 1980

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. ROBERT A. GRANT, Senior District Judge*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 80-1021

versus

ROBERT NOLAN SQUIRES,

Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois, Springfield Division
No. 79-CR-30018
J. WALDO ACKERMAN, Judge

O R D E R

On consideration of the petition for rehearing filed in the above-entitled cause by counsel for the defendant-appellant, all of the judges on the original panel having voted to DENY the same.

IT IS HEREBY ORDERED, that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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* Senior District Judge Robert A. Grant of the Northern District of Indiana is sitting by designation.

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v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 80-20

ROBERT N. SQUIRES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

QUESTIONS PRESENTED

1. Whether the district court properly instructed the jury on the issue of intent.

2. Whether the district court erred in admitting into evidence petitioner's contemporaneous written statement describing his version of the incident upon which the criminal charge was based.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statement	1
Argument	2
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Albertson v. *SACB*, 382 U.S. 70	6
California v. *Byers*, 402 U.S. 424	6
Cupp v. *Naughten*, 414 U.S. 141	3
Garner v. *United States*, 424 U.S. 648	6
Garrity v. *New Jersey*, 385 U.S. 493	5
Henderson v. *Kibbe*, 431 U.S. 145	2
Sandstrom v. *Montana*, 442 U.S. 570	4
Screws v. *United States*, 325 U.S. 91	2, 4
United States v. *Abravaya*, 616 F.2d 250	2
United States v. *Davis*, 608 F.2d 698	5
United States v. *Haynes*, 390 U.S. 85	6
United States v. *McClean*, 528 F.2d 1250	4
United States v. *O'Dell*, 462 F.2d 224	4
United States v. *Ogle*, 613 F.2d 233	5
United States v. *Park*, 421 U.S. 658	3
United States v. *Ragsdale*, 438 F.2d 21, cert. denied, 403 U.S. 919	4
United States v. *Shoup*, 608 F.2d 950	2
United States v. *Spiegel*, 604 F.2d 961	5
United States v. *Stokes*, 506 F.2d 771	4
United States v. *Thomann*, 609 F.2d 560	2

Constitution and statutes:

	Page
United States Constitution, Fifth Amendment ..	6
18 U.S.C. 242	1, 2, 3
18 U.S.C 4205(f)	1

OPINION BELOW

The judgment order of the court of appeals (Pet. App. 2-3) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 29, 1980. A petition for rehearing was denied on June 10, 1980 (Pet. App. 4). The petition for a writ of certiorari was filed on July 7, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Central District of Illinois, petitioner, a former police officer in Springfield, Illinois, was convicted of willfully depriving Richard G. Miller of his constitutional rights under color of law, in violation of 18 U.S.C. 242.[1] He was sentenced to one year's imprisonment, subject to the early release provision of 18 U.S.C. 4205(f) (Pet. App. 1). The court of appeals affirmed (Pet. App. 2-3).

The government's evidence at trial[2] showed that in the early morning hours of November 23, 1978, petitioner, who was then on duty, was summoned to the home of

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[1] 18 U.S.C. 242 provides, in pertinent part:

> Whoever, under color of any law, * * * willfully subjects any inhabitant of any State * * * to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, * * * shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

[2] A transcript of the trial is being lodged with the Clerk of the Court. Essentially similar descriptions of the events were given by the victim's daughter, Cindy (Tr. 20-36), the victim's wife, Louise (Tr. 65-80), the victim (Tr. 105-118), a friend of the daughter (Tr. 123-129), Officer Hypke (Tr. 141-159) and Officer Fahey (Tr. 185-195).

Richard Miller to resolve a family disturbance over some car keys that belonged to Miller's daughter, Cindy. Richard Miller had been drinking most of the evening, and was drunk and verbally abusive. When petitioner arrived, two other officers were already there and the situation was reasonably under control. Petitioner nonetheless interposed himself between Miller and another officer, pushed Miller into his kitchen and struck him several times, causing him to bleed profusely about the head. The victim was later taken to the hospital; approximately twenty stitches were required to close his wounds.

ARGUMENT

1. Relying on the plurality opinion in *Screws* v. *United States*, 325 U.S. 91, 101–107 (1945), petitioner contends (Pet. 9–15) that the district court failed to instruct the jury that, in order to find petitioner guilty of violating 18 U.S.C. 242, it had to find that petitioner struck his victim with the specific intent of depriving him of a constitutional right. After carefully examining the instructions, however, the court of appeals correctly concluded (Pet. App. 3) that they were consistent with the standards articulated in *Screws*.

At the outset, we note that petitioner did not raise this objection at trial, nor did he offer any alternative instruction. As this Court observed in *Henderson* v. *Kibbe*, 431 U.S. 145, 154 (1977), it is only in rare cases that an improper or incomplete instruction will justify reversal when no objection was made at trial. In those circumstances, the appellate courts will reverse only if plain error was committed. See, *e.g.*, *United States* v. *Abravaya*, 616 F.2d 250, 251 (5th Cir. 1980); *United States* v. *Thomann*, 609 F.2d 560, 565 (1st Cir. 1979); *United States* v. *Shoup*, 608 F.2d 950, 963 (3d Cir. 1979). Petitioner has failed to satisfy the plain error standard here.

On the contrary, when viewed as a whole (*United States* v. *Park*, 421 U.S. 658, 674-675 (1975); *Cupp* v. *Naughten*, 414 U.S. 141, 146-147 (1973)), the court's instructions were complete and correct in all respects.[3] In accordance with settled principles, the court instructed the jury that to convict under 18 U.S.C. 242, it had to find that

[3]The court instructed the jury as follows.

Instruction No. 16 (Tr. 444-445):

The third element to be proved is that the conduct of the Defendant must have deprived the victim of a right secured or protected by the constitution or laws of the United States. The victim in this case, in common with the Defendant and all other persons, including each and every one of you, living under the protection of our Constitution, has the legal right at all times not to be deprived of any liberty secured or protected by the Constitution without due process of law.

One of the "liberties" secured to the victim involved in this case by the Constitution is the liberty to be free from unlawful attacks upon his person. It has always been the policy of the law to protect the physical integrity of every person from unauthorized violence.

"Liberty" thus includes the principle that no person may ever be abused physically and without justification by a person acting under the color of the laws of any state. Accordingly, a person in the custody of arresting state officials, such as police officers, has a constitutional right to be reasonably secure in his person and free from unwarranted physical mistreatment by such officers.

Instruction No. 17 (Tr. 445-446):

With regard to the fourth element—willfullness—an act is done willfully if it is done voluntarily and intentionally, and with the specific intent to do something the law forbids—that is, with bad purpose to disobey or disregard the law; in the case of the statute involved here, with specific intent to deprive the victim of liberty without due process of law.

With regard to specific intent, intent is a state of mind that can be proven by circumstantial evidence. Indeed, it can rarely be established by any other means. In determining whether this element of specific intent was present you may consider all the attendant circumstances of the case.

You may infer that a person ordinarily intends all the natural and probable consequences of an act knowingly done. In other words, you may in this case infer and find that the Defendant

petitioner deprived his victim of a right secured by the Constitution of the United States and that petitioner acted with the specific intent to effect that deprivation. See *Screws* v. *United States*, *supra*, 325 U.S. at 103-105 (plurality opinion); *United States* v. *Stokes*, 506 F.2d 771, 774 (5th Cir. 1975); *United States* v. *O'Dell*, 462 F.2d 224, 230 (6th Cir. 1972). The Court further instructed that the constitutional right of due process of law includes the right not to be assaulted unreasonably and without justification by law enforcement officials while in their custody or control. See *United States* v. *Stokes*, *supra*, 506 F.2d at 775-776. Finally, the court instructed the jury that petitioner need not have been thinking in constitutional terms, so long as he knowingly and intentionally performed the act that deprived the victim of his constitutional rights. See *United States* v. *McClean*, 528 F.2d 1250, 1255 (2d Cir. 1976); *United States* v. *Ragsdale*, 438 F.2d 21, 26 (5th Cir.), cert. denied, 403 U.S. 919 (1971).[4]

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intended all the consequences that a person, standing in like circumstances and possessing like knowledge, should have expected to result from his or her act or acts knowingly done.

It is not necessary to show or prove that the Defendant was thinking of Constitutional terms, at the time of the incident, for a reckless disregard for a person's Constitutional rights is clear evidence of specific intent to deprive that person of those rights. You may find that the Defendant acted with requisite specific intent even if you find that he had no real familiarity with the Constitution or with the particular Constitutional right involved provided that you find that the—that he willfully and consciously did the act which deprived the victim of his constitutional rights. Nor does it matter that the Defendant may have also been motivated by hatred or revenge or some other emotion, provided the intent which I have described to you is present.

If you find that the Defendant knew what he was doing and he intended to do what he was doing, and if you find that what he did constituted a deprivation of a Constitutional right, then you may conclude that the Defendant acted with the specific intent to deprive the victim of that constitutional right.

[4]Petitioner also contends (Pet. 13-15) that the court's instruction on specific intent was contrary to the principles of *Sandstrom* v. *Montana*, 442 U.S. 510 (1979). This contention is frivolous. Unlike the in-

2. Relying on *Garrity* v. *New Jersey*, 385 U.S. 493 (1967), petitioner claims (Pet. 15–16) that a written statement prepared by him on the day of the incident was coerced, and that the district court erred in admitting the statement into evidence. This claim is insubstantial.

In *Garrity*, the Court held that a police officer's statement made in the course of an internal police department investigation was involuntary and inadmissible in evidence against the officer at a subsequent criminal trial where the officer was advised, prior to questioning, that if he refused to answer he could lose his job. There is no evidence in this case that petitioner's statement was involuntary under *Garrity*. In the first place, petitioner concedes (Pet. 15) that he was not threatened that his employment would be terminated; thus, unlike the officer in *Garrity*, he was not subjected to the choice of either forfeiting his job or incriminating himself. Second, so far as the record shows, the statement was not made as part of any official investigation of the incident. The statement indicates that it was prepared on the same day as the incident it describes, November 23, 1978.[5] Richard Miller did not file a complaint against petitioner until some time later (Tr. 292,

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struction in *Sandstrom*, which was couched in the language of a mandatory presumption, the instruction in this case was consistently phrased in terms that made it clear that the jury was permitted, but not required, to draw certain inferences or conclusions from the evidence. Compare *Sandstrom* v. *Montana*, *supra*, 442 U.S. at 514–515; see *id.* at 527 (Rehnquist, J., concurring). See also, *e.g.*, *United States* v. *Ogle*, 613 F.2d 233, 242–243 (10th Cir. 1979); *United States* v. *Davis*, 608 F.2d 698, 699 (6th Cir. 1979); *United States* v. *Spiegel*, 604 F.2d 961, 968–969 (5th Cir. 1979).

[5] We are lodging a copy of the statement (Gov't Ex. 16) with the Clerk of the Court.

298-299), and the chief of police did not order the complaint investigated until November 29, 1978 (Tr. 280).[6]

It may well be that the exhibit represents the kind of statement that officers are expected to file with respect to all such incidents in the normal course of business. No evidence was introduced to that effect, however. And this Court has never held, in any event, that every record required to be kept will be treated as "compelled" for Fifth Amendment purposes. If the sort of information required to be disclosed were *inherently* incriminating, that would be a different story. See, *e.g.*, *United States* v. *Haynes*, 390 U.S. 85 (1968) (firearm registration); *Albertson* v. *SACB*, 382 U.S. 70 (1965) (Communist registration). Where the activity to be reported is not inherently suspect, however, the required disclosure does not rise to the level of compelled self-incrimination. See *Garner* v. *United States*, 424 U.S. 648, 660-663 (1976) (tax returns); *California* v. *Byers*, 402 U.S. 424 (1971) (California hit-and-run statute).[7]

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[6] Moreover, petitioner never objected at trial on *Garrity* grounds, and thus the government was precluded from placing in evidence other exhibits that would have shown that petitioner's statement could not have been the product of an official investigation. While petitioner did register a belated objection to the statement on the ground that he was not informed "of his Fifth Amendment rights against self-incrimination" (Tr. 383), he did not suggest that the statement was coerced because it was given in the course of a police investigation.

[7] Finally, the statement, an essentially exculpatory version of petitioner's role in the incident, was consistent with petitioner's testimony at trial (Tr. 305-340). Its introduction into evidence was therefore harmless beyond a reasonable doubt.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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